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**OAG 17-017**

August 24, 2017

*Subject:* Whether KRS 189.950(6) pertains to constables' privately owned vehicle, and whether KRS 189.920 applies to constables.

*Requested by:* Bryan Anderson, Constable, Hopkins County District 5

*Written by:* Sam Flynn

*Syllabus:* KRS 189.950(6) pertains to constables' "official" emergency vehicle, not his privately owned vehicle. KRS 189.920(2) does not apply to constables.

*Statutes construed:* KRS Chapter 70, KRS 189.910, KRS 189.920, KRS 189.950, KRS 281.765, KRS 446.010

*OAGs cited:* OAG 70-583, 84-241, OAG 86-67

***Opinion of the Attorney General***

Bryan Anderson, Constable for Hopkins County District 5, has requested an opinion of this office as to whether KRS 189.950(6)<sup>1</sup> is unconstitutional and in conflict with the duties of the office of constable. Constable Anderson later revised his request, asking directly whether KRS 189.950(6) pertains to his privately owned vehicle and not county owned vehicles. Constable Anderson further raised the question of whether KRS 189.920(2) also applies to constables.

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<sup>1</sup> Constable Anderson's original request related to KRS 189.950. However, 2017 H.B. 74 amended KRS 189.950. As a result, 189.950(5) became KRS 189.950(6), and will be referenced as KRS 189.950(6) throughout this Opinion. The General Assembly made no substantive alterations to KRS 189.950(5).

The Kentucky Constitution Section 99 provides that constables, are county district constitutional officers. *See* Ky. Const. § 99.<sup>2</sup> Indeed, the Kentucky Court of Appeals recently opined, “the office of constable, recognized as an elected, constitutional office, is established in Section 99 of the Kentucky Constitution.” *See Whitlock v. Rowland*, 453 S.W. 740, n. 2 (Ky. App. 2015).

KRS 189.950(6) allows constables to request the fiscal court in the county of jurisdiction for approval to equip “vehicles used by said officers as emergency vehicles” with flashing, rotating, or oscillating blue lights and sirens. Specifically, the statute provides the following:

Any constable *may*, upon approval of the fiscal court in the county of jurisdiction, *equip vehicles used by said officer as emergency vehicles* with one (1) or more flashing, rotating or oscillating blue lights, visible under normal atmospheric condition from a distance of five hundred (500) feet to the front of such vehicle, and a siren, whistle or bell, capable of emitting a sound audible under normal conditions from a distance of not less than five hundred (500) feet. This equipment shall be in addition to any other equipment required by the motor vehicle laws. Any constable authorized by the fiscal court to utilize blue lights and a siren pursuant to this section shall maintain at least the insurance described by KRS 304.39-110.

(Emphasis added.)

The provision makes two express limitations. First, a constable must have approval of the fiscal court in his or her county of jurisdiction prior to equipping

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<sup>2</sup> Ky. Const. § 99 provides:

At the regular election in nineteen hundred and ninety-eight and every four years thereafter, there shall be elected in each county a Judge of the County Court, a County Court Clerk, a County Attorney, Sheriff, Jailer, Coroner, Surveyor and Assessor, and in each Justice's District one Justice of the Peace and one Constable, who shall enter upon the discharge of the duties of their offices on the first Monday in January after their election, and who shall hold their offices four years until the election and qualification of their successors.

his or her vehicle with lights and/or sirens.<sup>3</sup> Second, the vehicle must be an "emergency vehicle." Our inquiry regarding Constable Anderson's personally owned vehicle, deals specifically with the second limitation.

Interpreting pre-1974 versions of KRS 189.910 and KRS 189.950, the Kentucky Supreme Court determined that the personal vehicle of a constable, though used in the performance of his official duties, is not an "emergency vehicle" as defined in KRS 189.910 to 189.950. *See Com. v. Bradley*, 516 S.W.2d 644, 645 (Ky. 1974) (stating "there is no reference to a constable's vehicle in or to the duties of a constable in KRS 189.920 to KRS 189.950.") As such, the Court held that a constable may not equip his personal vehicle with a flashing, rotating, or oscillating blue light. *Id.*

However, in 1984 the General Assembly enacted 1984 H.B. 356, amending KRS 189.950 to expressly include a provision allowing constables to equip their motor vehicles with lights under certain circumstances. Specifically, H.B. 356 added Section 5, which included the same language as the current KRS 189.950(6), with the exception of once sentence relating to insurance. As HB 356 provided:

"(5) Any constable may, upon approval of the fiscal court in the county of jurisdiction, equip vehicles used by said officer as emergency vehicles with one (1) or more flashing, rotating or oscillating blue lights, visible under normal atmospheric condition from a distance of five hundred (500) feet to the front of such vehicle, and a siren, whistle or bell, capable of emitting a sound audible under normal conditions from a distance of not less than five hundred (500) feet. This equipment shall be in addition to any other equipment required by the motor vehicle laws."

Interpreting the 1984 version of KRS 189.910<sup>4</sup> and KRS 189.950, this office determined that a constable, with the approval of the fiscal court, may equip his

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<sup>3</sup> This office has previously determined that a fiscal court may terminate its approval of this privilege at any time, in its discretion. *See* OAG 86-67.

<sup>4</sup> KRS 189.910 was amended by 2011 Ky. Acts chs. 17 and 99, which are in conflict. Under KRS 446.250, Acts ch. 99, which was last enacted by the General Assembly, prevails.

or her "official vehicle" with flashing, rotating, or oscillating blue lights and sirens, despite the General Assembly's failure to amend KRS 189.910 to expressly include constables' official vehicles within the definition of "emergency vehicles." OAG 84-241.<sup>5</sup>

While the General Assembly does include privately owned vehicles within the definition of "emergency vehicles" in limited circumstances, these do not include constables' privately owned vehicles. *See* KRS 189.910. Rather, privately owned vehicles meet the definitional requirements of KRS 189.910 in circumstances where, for example, the privately owned vehicle has been commandeered by police officers. KRS 189.910(h). In addition, the General Assembly also expressly allows elected coroners and deputy coroners to use their privately owned vehicles as "emergency vehicles," where he or she has been granted permission to equip such vehicle with lights and siren pursuant to KRS 189.920. *See* KRS 189.910(j)-(k). However, the legislature has not enacted any such statutory allowance for constables to use their privately owned vehicles as "emergency vehicles," as defined under KRS 189.910.

Consistent with the legislative amendments to KRS 189.950 allowing constables to equip their emergency vehicles with flashing, rotating, or oscillating blue lights and sirens, this office's prior opinion in OAG 84-241, and the plain language of KRS 189.910, we find that the General Assembly's legislative intent, given the express reference to "vehicles used by said officer as emergency vehicles," was to allow constables to equip such vehicles with flashing, rotating, or oscillating blue lights and sirens. However, we find that such vehicles do not include constables' privately owned vehicles, but rather "official emergency vehicles" only. *See* OAG 84-241.

Constable Anderson also raised the question of whether KRS 189.920(2) also applies to constables. KRS 189.920(2) requires state, county, and municipal police vehicles, as well as sheriff's vehicles used as emergency vehicles to be equipped with flashing, rotating, or oscillating blue lights and sirens. The provision expressly provides:

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<sup>5</sup> The current version of KRS 189.910 also fails to expressly include constables' official vehicles within the definition of "emergency vehicle." *See* KRS 189.910(1).

(2) All state, county, or municipal police vehicles and all sheriffs' vehicles used as emergency vehicles shall be equipped with one (1) or more flashing, rotating, or oscillating blue lights, visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of the vehicle, and a siren, whistle, or bell, capable of emitting a sound audible under normal conditions from a distance of not less than five hundred (500) feet. This equipment shall be in addition to any other equipment required by the motor vehicle laws.

Although constables are "peace officers" as defined under KRS 446.010, their official vehicles are not state, county, or municipal police vehicles nor are they sheriff's vehicles under KRS 189.920(2).<sup>6</sup> As discussed above, constables are county district constitutional officers pursuant to Kentucky Constitution § 99. As constables cannot simultaneously hold incompatible state or municipal offices, their vehicles are not state or municipal police vehicles. *See e.g.*, OAG 70-583 (an elected constable cannot legally accept and hold a position as a municipal police officer).

Further, constables are not county police officers or sheriffs, and therefore their vehicles are not county police vehicles or sheriff's vehicles under KRS 189.920(2). Although Kentucky Constitution § 101<sup>7</sup> requires constables to possess the same qualifications as sheriffs, those offices are separate and distinct under Kentucky law. KRS Chapter 70 expressly categorizes county police, sheriffs, and constables as separate and distinct entities, with differing duties. *See e.g.*, KRS 70.010-.210 (sheriffs); KRS 70.310-.440 (constables); KRS 70.510-.570. (county police). As constables are not also sheriffs and/or county police officers, their vehicles are not county police vehicles or sheriff's vehicles. Accordingly, the requirements of KRS 189.920(2) does not apply constables' vehicles.

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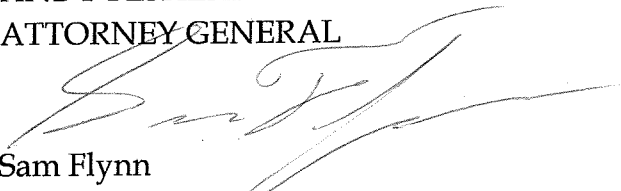
<sup>6</sup> Pursuant to KRS 281.765, "peace officers" are authorized and have the duty to enforce motor vehicle laws.

<sup>7</sup> Ky. Const. § 101 provides:

Constables shall possess the same qualifications as Sheriffs, and their jurisdictions shall be coextensive with the counties in which they reside. Constables now in office shall continue in office until their successors are elected and qualified.

As such, we find that subject to the approval of the fiscal court, KRS 189.950(6) only allows a constable to equip his or her "official" emergency vehicle, not his or her privately owned vehicle, with sirens and flashing, rotating, or oscillating blue lights as provided under KRS 189.950(6). Further, we find that KRS 189.920 does not apply to constables.

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